

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIM. NO: ST-2014-CR-91
	)	
-vs-	)	14 V.I.C. § 605(a)
	)	14 V.I.C. § 604(e)(19)
	)	14 V.I.C. § 1091
ROSEMARY SAUTER FRETT,	)	14 V.I.C. § 835(a)(1)
	)	14 V.I.C. § 834(2)
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Rosemary Sauter Frett's ("Defendant") Motion for Reduction of Bail filed April 16, 2014, Motion to Appoint Jacob Frett as Third Party Custodian filed April 22, 2014, Renewed Motion for Reduction of Bail Based on Property Appraisals filed on June 11, 2014, (Corrected) Renewed Motion for Reduction of Bail Based on Property Appraisals filed June 12, 2014, Notice of Filing in Support of Motion for Release from Custody filed on June 27, 2014 and Motion Requesting a Ruling on Her Renewed Motion for Reduction of Bail filed on July 2, 2014.¹ The foregoing filings will be collectively referred to as "Defendant's Motion for Reduction of Bail".

Initially, Defendant sought release from confinement into the custody of her husband as third-party custodian and upon posting of ten percent (10%) of her bail previously set at One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00). Following the May 20, 2014 hearing, Defendant filed a Motion to have her bail reduced to \$412,387.00, representing the combined equity of two properties whose appraisals she filed with the Court.

The People oppose reduction of the bail set by any amount and filed their Opposition to Defendant's Motion for Reduction of Bail on May 16, 2014.

A hearing was held on May 20, 2014 on Defendant's Motion for Reduction of Bail. Both parties presented witnesses who testified.

¹ Defendant Rosemary Sauter Frett is represented by Vincent Colianni, Esquire. The People are represented by Assistant Attorney Denise George.

I. Factual and Procedural Background.

On February 4, 2010, the Government of the Virgin Islands petitioned this Court for the issuance of a warrant for the arrest of Defendant. The request for the arrest warrant was based upon the affidavit of Kenneth Schulerbrandt, Jr., Special Agent with the V. I. Department of Justice, Special Investigations Division, which detailed the factual basis for charging Defendant with violations of V. I. CODE ANN. tit. 14 § 835(a)(1) (Drawing and Delivering Worthless Checks), 14 V.I.C. § 834(2) (Obtaining Money by False Pretense), 14 V.I.C. § 1091 (Embezzlement by Fiduciaries) and 14 V.I.C. § 605(a) (Operating a Criminal Enterprise). On the basis of the affidavit, which alleges Defendant misappropriated, embezzled or obtained by false pretense the sum of \$122,900.00, a warrant was issued on February 4, 2010 setting bail at \$250,000.

Schulerbrandt testified that after he received the February 4, 2010 arrest warrant he learned that the Defendant had left the island a day or so before. Schulerbrandt continued his investigation which included tracking down various leads and contacting the Federal Bureau of Investigation ("FBI") to assist in locating the Defendant.

On September 14, 2010, the Government of the Virgin Islands petitioned for the issuance of a second warrant for the arrest of Defendant. The request for the second arrest warrant was based upon another affidavit of Schulerbrandt which detailed the factual basis for charging Defendant with violations of 14 V.I.C. § 834(2) (Obtaining Money by False Pretense), 14 V.I.C. § 1091 (Embezzlement by Fiduciaries) and 14 V.I.C. § 605(a) (Operating a Criminal Enterprise). On the basis of Schulerbrandt's second affidavit, which alleges the Defendant misappropriated, obtained by false pretense, and embezzled the sum of \$886,625.00, a warrant was issued on September 29, 2010 and bail set at \$1,000,000.

In both instances, the petitions for the warrants were filed under seal on the grounds that the matter was of a sensitive nature and pre-execution disclosure would likely compromise the investigation and apprehension of the suspect.²

Defendant was a real estate broker and one of the owners of RE/MAX Dream Properties located in St. Thomas before she suddenly left the U. S. Virgin Islands on or about February 4, 2010. Mr. Jacob Frett, Defendant's spouse and the proposed third party custodian, testified that he and the Defendant had been married for 11 years when he drove Defendant to the St. Thomas airport on or about February 4, 2010. Frett testified that, at that time, Defendant told him that she was going to the doctor. When Frett took Defendant to the airport he expected her to come back. Frett also testified that he was not in contact with the Defendant after she left the Territory and that she only called him after she was arrested. Upon cross-examination, Frett denied having contact with Defendant while she was a fugitive.

² The arrest warrants and affidavits were unsealed upon motion by the People after the Defendant was apprehended on a fugitive warrant.

The People called James McCall, Director of Special Investigations at the V.I. Department of Justice. McCall testified that he met the Defendant when he first moved to St. Thomas and that she assisted him in buying a house. McCall stated that one day he saw the Defendant at Wendy's where she told him "I really need to speak to you." Shortly after that meeting, in early 2010, McCall was asked to assist in locating Defendant. During the course of his investigation, McCall contacted Federal law enforcement officials and learned that Defendant had left St. Thomas on American Airlines the day after he saw her at Wendy's. McCall further testified that authorities had Defendant's connecting flight information, knew she had a boarding pass and that she checked in for a connecting flight, but she did not board the flight in Miami as expected. McCall further stated that he knew nothing else about Defendant's whereabouts until she was apprehended in California. McCall also stated that as he was escorting Defendant back from San Diego to St. Thomas, Defendant told him that while in Miami she poured water on her cell phone to disable it thereby preventing it from being used as a tracking device.

In November 2011, the FBI obtained digital video snapshots of Defendant cashing checks at banks in Nashville and Hermitage, Tennessee.³ After Defendant was apprehended, the FBI learned that Defendant had been living in Elizabethtown, Kentucky, since approximately February 2012 and using the alias of Rita Johnson.⁴ Sometime in September 2013, Defendant moved to San Diego.⁵ According to McCall, Defendant told him she took the bus from Kentucky to San Diego because if she flew, authorities would track her.

In an Information filed February 26, 2014, Defendant was charged with one (1) count of violating 14 V.I.C. § 605(a) and 604(e)(19) (Criminally Influenced and Corrupt Organizations Act and Embezzlement of Fiduciaries), thirteen (13) counts of violating 14 V.I.C. § 1091 (Embezzlement by Fiduciaries), one (1) count of violating 14 V.I.C. § 835(a)(1), and two (2) counts of 14 V.I.C. § 834(2) (Obtaining Money by False Pretense).

In late January 2014, the Defendant was arrested by the FBI in San Diego County, California. After initially resisting extradition, the Defendant executed a Waiver of Extradition on March 21, 2014, and was extradited to the U. S. Virgin Islands where the two arrest warrants were served. Defendant was advised of her rights on April 4, 2014 and her bail set at \$1,250,000.00, with no ten percent provision.

At the May 20, 2014 hearing on Defendant's Motion for Reduction of Bail, Defendant's husband testified that he would be willing to serve as Defendant's third party custodian.

³ Plaintiff's Exhibit 1.

⁴ Pl. Ex. 1, 2, 3 and 7.

⁵ Pl. Ex. 2

II. Analysis

Defendant's Motion is governed by Superior Court Rule 141(a) which provides that "[a]ll persons shall, before conviction, be bailable by sufficient sureties approved by a judge or magistrate, provided, however, that *any real property utilized by such sureties to secure the defendant's appearance shall have a fair market value which is double the amount of bail set or reduced by the Court.*"⁶

Super. Ct. Rule 141(b) goes on to state that "[w]henever a person charged with an offense is before a judge or magistrate of this court for release on bail prior to trial, pursuant to these rules, the judge or magistrate shall, in considering the release of such person be guided by and apply the appropriate provisions of the 'The Bail Reform Act'...."

Super. Ct. Rule 141(c) lays out four conditions of release: cash bail bond, surety bond, unsecured bail bond and personal recognizance. Similarly, when determining the conditions of pretrial release of a person charged with an offense, Section 3142(a) of the Bail Reform Act provides that:

a) In General.— Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section; (2) released on a condition or combination of conditions under subsection (c) of this section; (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or (4) detained under subsection (e) of this section.

The Bail Reform Act requires pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.⁷

If the judicial officer determines that the release described in Section 3142(b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, then such judicial officer shall order the pretrial release of the person subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required.⁸

⁶ Emphasis supplied.

⁷ 18 U.S.C.A. § 3142(b).

⁸ 18 U.S.C.A. § 3142(c).

Counsel for Defendant argued that his client left this jurisdiction because she had been a witness in a trial involving police corruption and as a result of that trial, she received threats on her life. McCall testified that he had no reason to doubt that the Defendant feared for her safety and when asked by McCall why she did not contact him, Defendant told McCall that she didn't think he could help her because the "feds" no longer tried to assist her. Even if this were the case, Defendant avoided arrest for at least 3 years and 11 months. The fact that she eventually waived extradition to the U. S. Virgin Islands does not convince this Court that she is any less of a flight risk. Waiver of extradition does not amount to voluntary surrender to law enforcement authorities.

Defendant argues she was not aware that there were warrants for her arrest when she left St. Thomas on February 4, 2010. However, at some point during the almost 4 years when she was not in the U. S. Virgin Islands, the Defendant, who was adept at social media and email, had to have learned about the arrest warrants. McCall also testified that during the flight back from San Diego to St. Thomas, Defendant told him she knew she was wanted, that she was waiting for things to blow over, and that since she had found God, he would tell her when it was time.

Defendant's claim that she left this jurisdiction out of fear for her safety is undermined by the fact that on January 31, 2010, two realtors, also affiliated with RE/MAX Dream Properties, sent emails to Defendant demanding payment of money allegedly held in an escrow account maintained by Defendant for RE/MAX Dream Properties.⁹ Nor does the Court think it was a coincidence that the first arrest warrant was obtained on or about the same day that Defendant left St. Thomas as that warrant was based upon complaints to the V. I. Department of Justice made well before Defendant left St. Thomas.¹⁰

After hearing the arguments of counsel, testimony of the witnesses and reviewing the evidence presented at the May 20, 2014 hearing, the Court finds that the People have established by a preponderance of the evidence that the Defendant poses a risk of flight. Accordingly, the Court will not permit Defendant to be released on her own personal recognizance or upon an unsecured appearance bond in any amount.¹¹

Defendant is also facing a 17-count Information that could result in significant incarceration time. "There exists a presumption in pre-trial bail proceedings that the likelihood of flight increases with the severity of the strength of the government's case, and the penalty which conviction could bring."¹² Thus, the penalties that Defendant is facing increase the likelihood that Defendant is a flight risk.

Having found that the Defendant poses a risk of flight, the Court is faced with the challenge of determining what conditions of release will secure a reasonable assurance of the Defendant's appearance before this Court for future proceedings. The People argued that since Defendant left

⁹ Pl. Ex. 5.

¹⁰ See also Pl. Ex. 5.

¹¹ *United States v. McConnell*, 842 F.2d 105, 110 (5th Cir. 1988).

¹² *Gov't of the V.I. v. Texido*, 35 V.I. 3, 6 (V.I. Super. Ct. 1996) (citations omitted).

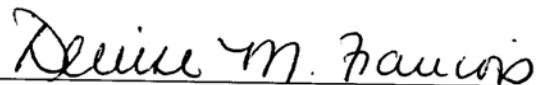
her family for almost four years, it is questionable what meaningful ties, if any, she may have to this jurisdiction. Given that Defendant walked away from her family and property once before, created a new identity and life for herself in Kentucky and Tennessee,¹³ and stayed away for almost 4 years, only a significant bail amount will assure that Defendant will appear for Court proceedings and trial in this matter. In determining a bail that will reasonably assure Defendant's appearance, the Court must also take into consideration that the Bail Reform Act also provides that the judicial officer may not impose a financial condition that results in the pretrial detention of the person.¹⁴ In this regard, the sum of \$1,250,000.00 as bail is too high.

III. Conclusion.

Based upon the foregoing, the Court will reduce Defendant's bail to the sum of Three Hundred Thousand Dollars (\$300,000.00) which may be met with one or more sureties or a deposit of cash. Any real property utilized by such sureties to secure the Defendant's release shall have a fair market value which is double the amount of bail set or reduced by the Court.¹⁵ The Court finds that this sum of money, together with placing the Defendant under house arrest and the other conditions to be included in a separate Order, will reasonably assure Defendant's appearance before this Court for future proceedings and trial.

A separate Order follows with all of the conditions of Defendant's pretrial release from custody.

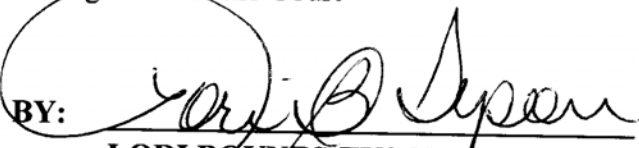
DATED: July 18, 2014


DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE

Acting Clerk of the Court

BY: 

LORI BOYNES-TYSON

Court Clerk Supervisor 7/18/14

¹³ Pl. Exs. 2, 3, 4 and 7.

¹⁴ 18 U.S.C.A. § 3142(c)(2).

¹⁵ Super. Ct. Rule 141(a).